

## DEFINITIONS

### §289.1. Definitions of Terms.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

**Act or weather modification act** - The Weather Modification Act, 1967 (60th Legislature, 1967, Chapter 576, page 1295) as amended and codified--the Texas Water Code, Chapter 18.

**Commission** - The Texas Water Commission.

**Director or executive director** - The executive director, or an acting executive director, of the Texas Water Commission, or any authorized individual designated by the executive director to act in his or her place, unless a direct authorization from the executive director or acting executive director is required by the Texas Water Code or this title.

**Hail suppression** - The release of appropriate ice nucleating materials or other chemicals into or adjacent to a cloud for the purpose of artificially limiting natural hailstone growth within the cloud, so as to reduce, at ground level, the size, frequency and damage without decreasing the cloud's natural precipitation efficiency.

**In control of and in charge of** - An individual in control of and in charge of a weather modification and control operation means the project manager, i.e., the individual that is responsible to make day-to-day decisions concerning the operation, whether or not physically located on-site.

**Operation** - The performance of weather modification and control activities entered into for the purpose of producing, or attempting to produce, a certain weather modifying effect within one geographical area over one continuing or recurring time interval not exceeding four years.

**Operational area** - That area, described by metes and bounds or other specific bounded description, within which it is reasonably necessary to effectuate the purposes of a permitted operation. A part of the operational area may be outside the target area and thus not intended to be affected by the operation. If hail suppression activities are included, the operational area shall not exceed eight miles from the limits of the target area.

**Research and development** - Theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes including the experimental production and testing of hypotheses models, devices, equipment, materials, and processes.

**Target area** - The area described by metes and bounds, or other specific bounded description, which is intended to be affected by the operation.

**Weather modification and control** - Changing or controlling, or attempting to change or control, by artificial methods the natural development of any or all atmospheric phenomena, including cloud forms or precipitation forms which occur in the troposphere.

**Weather modifier** - Any person undertaking weather modification or control activities.

## **ISSUANCE OF LICENSES AND PERMITS**

### **§289.11. License and Permits Required.**

(a) Unless specifically exempted by §289.12 of this title (relating to License and Permit Not Required), no person may engage in weather modification and control activities without first obtaining a license and permit from the commission.

(b) A separate permit is required for each weather modification project. If an operation is to be conducted under contract, a permit is required for each separate contract.

### **§289.12. License and Permit Not Required.**

Persons may engage in the following types of weather modification and control activities without obtaining a license or permit from the commission:

- (1) laboratory research and experiments;
- (2) activities of an emergency nature for protection against fire, frost, sleet, or fog; and
- (3) research, development, and experiments conducted by federal agencies.

### **§289.13. Application for License.**

An application for a license shall be filed with the executive director on a form provided or approved by the executive director, and in order to be considered as complete and ready for processing shall include the following:

- (1) a license fee of \$150.00;
- (2) evidence of the following:
  - (A) the possession by the applicant of a baccalaureate or higher degree in meteorology and at least one year's experience in weather modification;
  - (B) the possession by the applicant of a baccalaureate or higher degree in physical science or engineering and at least five years experience in the field of meteorology; or
  - (C) other training and experience that the commission accepts as indicative of sufficient competence in the field of meteorology to engage in weather modification activities;
- (3) if the applicant is an organization, evidence of the possession of the educational and experience qualifications enumerated in paragraph (2) of this subsection by the individual or individuals who will be in control and in charge of the applicant's operations.

**§289.14. Expiration Date.**

Each original or renewal license expires on August 31 of the state's fiscal year for which it was issued.

**§289.15. Renewal of License.**

(a) At the expiration of a license, the commission shall issue a renewal license to each applicant who pays the annual license fee and who maintains the qualifications necessary for issuance of an original license.

(b) The commission may refuse to renew the license of any applicant who:

(1) has failed to comply with any provision of the license, the Act, this chapter, or any weather modification permit issued to the licensee by the commission; or

(2) has violated provisions of weather modification permits or licenses in another state, resulting in suspension or revocation of the applicant's license in that other state.

**§289.16. Referral of License Application to Commission.**

After determining that the application for a weather modification license or a renewal is administratively complete, the executive director shall prepare a declaration of administrative completeness and forward it to the chief clerk of the commission. Upon completing review, the executive director shall submit the application to the commission for consideration.

**§289.17. Notice of Intention.**

(a) Any person seeking to obtain a weather modification permit shall file with the executive director a notice of intention to engage in a weather modification operation. The executive director shall review and approve the notice before newspaper publication.

(b) The applicant shall include the following information in the notice of intention:

(1) a statement that an application for a weather modification permit has been filed with the commission, giving name and address of the applicant;

(2) the date on which the Texas Water Commission issued the applicant a Texas weather modification license and all dates of renewal, or the date on which the applicant filed with the commission an application for a weather modification license;

(3) the nature and objectives of the proposed operation and the number of years for which a permit is requested;

(4) if applicable, the person or organization, including mailing address and occupation, on whose behalf the operation is to be conducted;

(5) the operational area in which the proposed operation will be conducted, described by metes and bounds or other specific bounded descriptions, in sufficient detail to permit plotting on an official Texas highway map;

(6) the target area, which is intended to be affected by the proposed operation, described by metes and bounds or other specific bounded descriptions, in sufficient detail to permit plotting on an official Texas highway map;

(7) the materials and methods to be used in conducting the proposed operation;

(8) the approximate dates and times during which the proposed operation will be conducted;

(9) a statement that persons interested in the permit application should contact the executive director for more information;

(10) a statement summarizing the conditions under which the commission will hold a public hearing on the application, as set forth in §289.20 of this title (relating to Requests for Hearing on Application for Permit).

(c) The applicant shall submit with the notice of intention the type of supporting data prescribed in §289.18(3) of this title (relating to Application for Permit).

(d) The executive director shall decide whether the notice of intention should include hail suppression as an objective of the proposed operation. The executive director may seek the advice of the Weather Modification Advisory Committee, as provided by Texas Water Code §18.015.

(e) If the notice of intention is disapproved as submitted to the executive director for its failure to identify hail suppression as an objective of the proposed operation, the applicant may, within 10 days, request that the commission determine whether the proposed operation includes hail suppression. If the commission determines that hail suppression is not an objective of the operation, the commission shall enter a preliminary order to that effect. If, after a hearing reviewing the executive director's decision, the commission determines that hail suppression is an objective of the proposed operation, the commission shall enter a final order to that effect.

(f) The applicant shall cause the notice of intention to be published at the applicant's cost at least once a week for three consecutive weeks in a newspaper of general circulation published in each county in which the operation is to be conducted and in each county which includes any part of the affected area. If in any such county no newspaper of general circulation is published, then publication shall be made in a newspaper having general circulation in that county.

(g) The applicant shall file proof of publication, including publishers' affidavits, with the commission during the 15-day period immediately following the date of the last publication.

**§289.18. Application for Permit.**

An application for a weather modification permit must be filed with the executive director and shall not be considered administratively complete unless submitted on a form provided or approved by the executive director and must include the following:

- (1) a permit fee of \$75.00;
  - (2) proof that the applicant holds a valid weather modification license or has a pending application for one;
  - (3) supporting data for the application in a form prescribed by the executive director, including a plan of operation that details the type of weather modification activity proposed, equipment and personnel involved in the operation, a description of climate and hazardous weather in the operational area, cloud-seeding methodology (or the techniques and control used for other proposed types of weather modification), and a technique to evaluate the overall effect of the proposed operation;
  - (4) all contracts, letters of intent, or proposals which pertain to conducting the proposed operation for a client;
  - (5) an illustration of the operational and target areas that is plotted on an official Texas highway map;
  - (6) sufficient information to satisfy the executive director that the applicant is able to respond in damages for liability which might reasonably arise as a result of the proposed operation, such as a copy of a comprehensive liability insurance policy or a certificate from an insurer guaranteeing coverage for the proposed operation during the proposed term;
  - (7) a notice of intention which has been approved in form by the executive director;
- and
- (8) a list containing the name, post office address, and home and on-site phone numbers of each individual who will participate or assist in the operation.

**§289.19. Referral of Permit Application to Commission.**

After determining that the application for a weather modification permit is administratively complete, the executive director shall prepare a declaration of administrative completeness and forward it to the chief clerk of the commission. Upon completing technical review, the executive director shall submit the application to the commission for consideration or setting of a hearing.

**§289.20. Requests for Hearing on Application for Permit.**

(a) If at least 25 eligible persons make written request, the commission shall hold a public hearing on an application prior to issuance of a permit.

(b) Those eligible to request a hearing on an application include all persons at least 18 years of age who reside or own property within the boundaries of the weather modification operational area, as defined in the application.

(c) A request for hearing must include:

(1) the signature, full name, mailing address, and phone number of each person requesting a hearing;

(2) a statement that each person requesting a hearing is at least 18 years of age and resides or owns property within the proposed operational area; and

(3) a brief description of the interest in the application of each person requesting a hearing and of how the application, if granted, would adversely affect that interest;

(d) Requests for hearing must be received by the commission within 30 days after first publication of the notice of intention, as prescribed in §289.17 of this title (relating to Notice of Intention). The commission, for good cause, may extend the time allowed for submitting a request for hearing.

(e) Upon determining that proper requests for hearing from at least 25 persons have been submitted, the commission will schedule a public hearing within the area where the operation is to be conducted.

(f) Notice stating the time, place, subject, and legal authority of the hearing(s) shall be provided at least 20 days prior to the hearing, as follows.

(1) The commission shall give notice by first-class mail to the applicant and to each person who has submitted a proper request for hearing.

(2) The applicant shall cause notice to be published (at the applicant's cost) at least once in a newspaper of general circulation published in each county in which the operation is to be conducted and in each county which includes any part of the affected area. If in any such county no newspaper of general circulation is published, then publication shall be made in a newspaper having general circulation in that county.

**§289.21. Action on Application for Permit.**

(a) The commission may issue a weather modification permit if it determines the following:

(1) that the operation proposed in the application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area;

(2) that the applicant:

(A) holds a valid weather modification license;

(B) has submitted a complete application in accordance with §289.18 of this title (relating to Application for Permit);

(C) has published a notice of intention and submitted proof of publication as required by §289.17 of this chapter (relating to Notice of Intention); and

(3) if the Texas Water Code, §18.0841 (relating to Election for Approval of a Permit that Includes Authorization for Hail Suppression), is pertinent to the application:

(A) that the results of all elections held in precincts, in whole or in part, in the target area, have approved the inclusion of hail suppression as a part of the weather modification operation; and

(B) that the results of elections held in precincts, in whole or in part, in the operational area, which approved the inclusion of hail suppression as a part of the weather modification operation yield an operational area which remains feasible for the conduct of the weather modification operation.

(b) If the application for a weather modification permit that includes a request for authorization to conduct hail suppression activities does not describe a proposed operational area, the commission may designate an operational area within the proposed target area which can not be more than eight miles inside of the outer limits of the proposed target area.

#### **§289.22. Description of Permit.**

A weather modification permit shall include the following:

(1) the effective period of the permit, which shall not exceed four years, and

(A) if the permit is for more than one year, the permit shall contain a statement that it shall remain valid for so long as the permittee continues to operate in successive years during all or part of the months authorized;

(B) if a weather modifier is authorized to conduct an operation on behalf of a sponsoring entity, the term of the permit shall be limited to the duration of the contract in effect between the weather modifier and the sponsor at the date that the commission issues the permit; and

(C) if a weather modifier and client initially contract that their agreement should be renegotiated during the term of a multi-year permit, the permit shall contain a statement that the weather modifier must submit a copy of any modified contract to the executive director for review and approval before the start of operations under that modified contract;

(2) a description of the boundaries of the operational and target areas and a map that depicts those areas;

(3) the weather modification method(s) which may be employed;

(4) a requirement that the permittee maintain insurance coverage or other financial assurance of the types and amounts satisfactory to the commission for the term of the permit;

(5) a requirement that the permittee maintain a valid license and that the operation be directed only by those individuals whose credentials were evaluated for issuance of the license;

(6) a statement that the operation must be conducted during each year of a multi-year permit, as set forth in the plan of operations, and that the plan is incorporated in the permit;

(7) a requirement that the permittee notify the executive director of changes to the list of names, addresses, and home and on-site office phone numbers of the individuals who conduct the operation;

(8) a statement that the commission shall have immediate access to any information the permittee maintains that is pertinent to day-to-day weather modification operations; and

(9) other terms, requirements, and conditions that the commission deems advisable.



## **RECORDS AND REPORTS**

### **§289.31. Information To Be Recorded.**

Any person conducting an operation in Texas shall keep and maintain a record of each operation. For all operations, the daily log (NOAA Form 17-4B) required by 15 Code of Federal Regulations, §908.8(a), and the supplemental information required by 15 Code of Federal Regulations, §908.8(b), (c), and (d) thereof shall be recorded by each operator. In addition, for all operations in which aircraft are employed for reconnaissance and seeding purposes, information consisting of the dates on which operations are conducted, each period (in minutes of local time) of operation, a description of the track of each flight, the rates of dispersion of the seeding agent for each flight, and the total amount of seeding agent dispensed during each operation shall be recorded by each operator. The tracks of all seeding and reconnaissance missions shall be logged in such a manner so as to allow a complete and accurate reconstruction of each run. The tracks may be identified by either radial distance from a standard reference point or by ground fixes in statute miles from a nearby town or landmark at the beginning and ending of each aerial event. Furthermore, each applicant shall promptly report to the executive director any changes or additions to the list, submitted with the application, which contains the names and mailing addresses of individuals involved in the operation.

### **§289.32. Time for Making Reports.**

(a) Any person conducting an operation shall submit to the executive director, for each month in which operations are conducted, one copy of the record of operations required by §289.31 of this title (relating to Information to be Recorded), and any supplemental information for that month, by the fifth day of the succeeding month.

(b) Copies of all other reports required by 15 Code of Federal Regulations, §§908.5-908.7, shall be submitted to the executive director as soon as practicable, but in no case later than the deadlines set by the federal regulation.

**AMENDMENT, REVOCATION, AND SUSPENSION OF  
LICENSES AND PERMITS ON MOTION OF COMMISSION**

**§289.41. Amendment, Revocation, or Suspension.**

(a) The executive director may initiate proceedings before the commission:

(1) to amend a permit if it appears necessary to protect the health or property of any person;

(2) to suspend or revoke a permit or license if the executive director has good cause to believe that the permit or license should be suspended or revoked; or

(3) to approve changes in operational personnel or other information pertaining to the weather modification license, in which case the executive director may seek the advice of the Weather Modification Advisory Committee.

(b) Suspension of a license shall suspend automatically for a like period of time any permit issued under that license, unless the permit is issued to more than one licensee, and at least one of those licensees remains in good standing.

(c) Revocation of a license shall revoke automatically any permit issued under that license, unless the permit is issued to more than one licensee, and at least one of those licensees remains in good standing.

**§289.42. Good Cause.**

Good cause to believe that a permit or license should be revoked or suspended shall include, but not be limited to, the following:

(1) Licenses.

(A) The licensee has violated any of the provisions of the Act, rules, or license.

(B) The licensee has submitted false and/or misleading information on his or her application.

(C) The individual or individuals named in the license no longer possess the qualifications necessary for the issuance of an original license.

(D) The operational personnel or other information which were the basis for the issuance of the license have changed materially.

(E) The licensee is deemed incompetent to hold a license by virtue of previous violations of weather modification permits or licenses in other states, resulting in suspension or revocation of the licensee's license in that other state.

(2) Permits.

(A) The licensee has violated any of the provisions of the Act, rules, or the permit.

(B) The applicant has submitted false or misleading information in either its application for a permit or the records required to be submitted by §§289.31-289.32 of this title (relating to Records and Reports).

(C) The permittee's license has expired during the term of the permit and the licensee has not made a timely request for renewal.

(D) The executive director has reason to believe that the permitted operation is significantly dissipating the clouds and preventing the natural course of developing rain in the area where the operation is conducted to the material detriment of persons or property in that area.

**§289.43. Notice and Hearing.**

(a) The commission may not amend, suspend or revoke a permit or a license without first giving the licensee or permittee notice and a reasonable opportunity to be heard with respect to the grounds for the commission's proposed action.

(b) The commission shall give notice in the following manner.

(1) Not less than 20 days prior to the hearing date, notice shall be sent to the licensee or permittee by certified mail, return receipt requested.

(2) The notice shall include:

(A) a statement of the time, place and nature of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held; and

(C) a short and plain statement of the matters asserted, or if the executive director is unable to state the matters in detail, a statement of the issues involved.

**§289.44. Emergency Order To Cease Operations.**

If the executive director determines that probable imminent injury or hazard will result to any person, property, or to the public, by reason of a permitted operation, he or she shall immediately

initiate proceedings before the commission to order a licensee to cease some or all operations without suspending the permit. Notice of the order to discontinue operation may be given verbally by a specifically authorized representative of the executive director to the licensee or to the person in control and in charge of the operation, to be confirmed in writing thereafter at the earliest possible date. The licensee may resume operations after he or she has been notified by a specifically authorized representative of the executive director that the probability of injury or hazard has ceased.

## **AMENDMENT OF PERMITS UPON APPLICATION OF PERMITTEES**

### **§289.51. Application for Amendment.**

A permittee seeking to amend any provision of a weather modification permit shall file a notice of intention and an application prepared in the same manner as for an original application for permit, as provided in §§289.11-289.22 of this title (relating to Issuance of Licenses and Permits); however, the headings of the notice of intention and application should be altered to reflect the fact that the permittee seeks an amendment rather than an original permit.

### **§289.52. Action on Application for Amendment.**

The executive director and commission shall process an application for amendment in the same manner as an original application for permit; an application for amendment is specifically subject to the same standards as an original application for permit in determining when to refer it to the commission, as provided by §289.19 of this title (relating to Referral of Permit Application to Commission); in evaluating requests for hearing on the application, as provided by §289.20 of this title (relating to Requests for Hearing on Application for Permit); and in making final disposition of the application, as provided by §289.21 of this title (relating to Action on Application for Permit).

### **§289.53. Exception for Minor Amendments.**

(a) No notice of intention need be filed or published and no hearing will be scheduled with respect to applications for amendments that the commission deems minor.

(b) An amendment shall be deemed minor if:

(1) in the judgment of the commission, it has no potential for harming the health or property of any person; and

(2) it does not negate or render inaccurate any information contained in the notice of intention that was published with respect to the original application for the permit that is sought to be amended.

## **HAIL SUPPRESSION ELECTION PROVISIONS**

### **§289.61.**

If the notice published pursuant to the Texas Water Code, §18.086, does not include notice that the applicant proposes to suppress hail as an objective of the operation, any qualified voter in the proposed target or operational area may request that the commission determine whether or not the purpose of the proposed operation covered by the application for weather modification permit includes hail suppression. The commission shall hold a preliminary hearing concerning the nature of the proposed operation. The commission shall enter a preliminary order which determines the nature of the operation. If the commission determines that the proposed operation includes hail suppression as an objective, the commission shall dismiss the application, unless the applicant republishes the notice of intention in accordance with these sections and in a form prescribed by the commission within the time limitation provided in the commission order of dismissal.

### **§289.62.**

If within 30 days of the first publication of a notice of intention which includes hail suppression, qualified voters in counties or parts of counties included in the target area or operational area petition and cause an election or elections to be held, under this Act, the commission must evaluate the results of the election or elections, as certified by the respective county commissioners court, before issuing a permit. If, as a result of the election or elections, certain areas are excluded from the coverage of the permit as applied for, the commission must determine if the proposed operation is still feasible for those areas in which no election was requested and in those areas in which the voters gave their approval. No permit can be issued if a majority of the qualified voters voting in the election precincts which are wholly within the target area vote in opposition to the issuance of the permit. Also, no permit can be issued covering all or part of a target area or an operational area that was previously excluded from the coverage of a permit by virtue of an election, unless as a result of the publication of notice of the new application, an election was called and a majority of qualified voters voted in favor of the proposition. After the results of an election or elections are received, the commission may conduct a hearing for the sole purpose of determining the feasibility of the proposed operation, or may include consideration of this issue in the hearing on the application for the permit.

Date Effective: February 25, 1986